

§ 80.60 Partitioned licenses and disaggregated spectrum.

(a) *Eligibility.* VHF Public Coast area (VPC) licensees, *see* § 80.371(c)(1)(B) of this part, may partition their geographic service area or disaggregate their spectrum pursuant to the procedures set forth in this section. Parties seeking approval for partitioning and disaggregation shall request an authorization for partial assignment pursuant to § 1.924 of this chapter.

(b) *Technical standards.* (1) *Partitioning.* In the case of partitioning, all requests for authorization for partial assignment of a license must include, as an attachment, a description of the partitioned service area. The partitioned service area shall be defined by coordinate points at every 3 degrees along the partitioned service area unless an FCC-recognized service area is utilized (e.g., Metropolitan Service Area, Rural Service Area, or Economic Area) or county lines are used. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83). In a case where an FCC-recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount, provided acquired spectrum is disaggregated according to frequency pairs.

(3) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's term as provided for in § 80.25 of this part.

(d) *Construction Requirements.*

(1) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the substantial service requirement for their respective partitioned areas. If either licensee failed to meet its substantial service showing requirement, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the substantial service requirement for the entire market. If the partitionor fails to meet the substantial service standard, however, only its renewal application would be subject to forfeiture at renewal.

(2) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the substantial service requirement for the geographic service area. If parties choose this option and either party fails to do so, both licenses would be subject to forfeiture at renewal. The second option would allow the parties to agree that either the disaggregator or the disaggregatee would be responsible for meeting the substantial service requirement for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the nonperforming party would be subject to forfeiture at renewal.

8. Section 80.70 is amended by adding new subsection (c) as follows:

§ 80.70 Special provisions relative to coast station VHF facilities.

* * * * *

(c) A VHF (156-162 MHz) public coast station licensee initially authorized on any of the channels listed in the table in § 80.371(c)(1)(A) of this part may transfer or assign its channel(s) to another entity. If the proposed transferee or assignee is the geographic area licensee for the geographic area to which the channel is allocated, such transfer or assignment will be deemed to be in the public interest. However, such presumption will be rebuttable.

9. Section 80.105 is revised to read as follows:

§ 80.105 General obligations of coast stations.

Each coast station or marine-utility station must acknowledge and receive all calls directed to it by ship or aircraft stations. Such stations are permitted to transmit safety communication to any ship or aircraft station. VHF (156-162 MHz) public coast stations may provide fixed or hybrid services on a co-primary basis with mobile operations.

10. Section 80.213 is amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 80.213 Modulation requirements.

(a) * * * * *

(2) When phase or frequency modulation is used in the 156-162 MHz band the peak modulation must be maintained between 75 and 100 percent. * * *

* * * * *

(d) Ship and coast station transmitters operating in the 156-162 MHz band must be capable of proper operation with a frequency deviation of ± 5 kHz when using any emission authorized by § 80.207 of this part.

11. Section 80.303 is amended by revising paragraph (b) to read as follows:

§ 80.303 Watch on 156.800 MHz (Channel 16).

* * * * *

(b) A coast station is exempt from compliance with the watch requirement when Federal, State, or Local Government stations maintain a watch on 156.800 MHz over 95% of the coast station's service area. Each licensee exempted by rule must notify the nearest district office of the U.S. Coast Guard at least thirty days prior to discontinuing the watch, or in the case of new stations, at least thirty days prior to commencing service. The Coast Guard may require any coast station to maintain the watch temporarily or permanently. The Coast Guard may also require any coast station to remain capable of either immediately resuming the watch or providing the Coast Guard direct dial-up access to the necessary 156.800 MHz transceiver at no charge so that the Coast Guard can maintain the watch.

* * * * *

12. Section 80.371 is amended by revising paragraph (c) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) Working frequencies in the marine VHF 156-162 MHz band. (1)(A) The frequency pairs listed in the table below are available for assignment to public coast stations for public correspondence communications with ship stations and units on land.

* * *

(B) Service areas in the marine VHF 156-162 MHz band are VHF Public Coast areas (VPCs). As listed in the table below, VPCsAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas, and has assigned them EA numbers 173-176, respectively. Maps of the EAs and VPCsAs are available for public inspection and copying at the Public Safety and Private Wireless Division, room 8010, 2025 M Street, NW, Washington, DC. Except as shown below, the frequency pairs listed in paragraph (c)(1)(A) of this section are available for assignment to a single licensee in each of the VPCs listed in the table below. In addition to the listed EAs listed in the table below, each VPC also includes the adjacent waters under the jurisdiction of the United States.

VHF Public Coast areas (VPCs)		
VPCs	EAs	Frequency Pairs Not Available for Assignment
1 (Northern Atlantic)	1-5, 10	--
2 (Mid-Atlantic)	9, 11-23, 25, 42, 46	--
3 (Southern Atlantic)	24, 26-34, 37, 38, 40, 41, 174	--
4 (Mississippi River)	34, 36, 39, 43-45, 47-53, 67-107, 113, 116-120, 122-125, 127, 130-134, 176	--
5 (Great Lakes)	6-8, 54-66, 108, 109	--
6 (Southern Pacific)	160-165	--
7 (Northern Pacific)	147, 166-170	--
8 (Hawaii)	172, 173, 175	--
9 (Alaska)	171	--
10 (Grand Forks)	110	84, 25
11 (Minot)	111	84, 25

12 (Bismarck)	112	84, 25
13 (Aberdeen)	114	84, 25
14 (Rapid City)	115	84, 25
15 (North Platte)	121	84, 25
16 (Western Oklahoma)	126	25, 85
17 (Abilene)	128	25, 85
18 (San Angelo)	129	25, 85
19 (Odessa-Midland)	135	25, 85
20 (Hobbs)	136	25, 85
21 (Lubbock)	137	25, 85
22 (Amarillo)	138	25, 85
23 (Santa Fe)	139	84, 25
24 (Pueblo)	140	84, 25
25 (Denver-Boulder-Greeley)	141	84, 25
26 (Scottsbluff)	142	84, 25
27 (Casper)	143	84, 25
28 (Billings)	144	84, 25
29 (Great Falls)	145	84, 25
30 (Missoula)	146	84, 25
31 (Idaho Falls)	148	25, 85
32 (Twin Falls)	149	25, 85
33 (Boise City)	150	84, 25
34 (Reno)	151	84, 25
35 (Salt Lake City-Ogden)	152	25, 85
36 (Las Vegas)	153	84, 25
37 (Flagstaff)	154	84, 25
38 (Farmington)	155	84, 25
39 (Albuquerque)	156	84, 25
40 (El Paso)	157	25, 85
41 (Phoenix-Mesa)	158	84, 25

42 (Tucson)	159	84, 25
-------------	-----	--------

(C) Subject to paragraph (c)(3) of this section, each licensee may also operate on 12.5 kHz offset frequencies in areas where the licensee is authorized on both frequencies adjacent to the offset frequency, and in areas where the licensee on the other side of the offset frequency consents to the licensee's use of the adjacent offset frequency.

(2) Any recovered channel pairs will revert automatically to the holder of the VPC license within which such channels are included, except the channel pairs listed in the table in paragraph (c)(1)(B) of this section. Those channel pairs, and any channel pairs recovered where there is no VPC licensee, will be retained by the Commission for future licensing.

(3) VPC licensees may not operate on Channel 228B (162.0125 MHz), which is available for use in the Coast Guard's Ports and Waterways Safety System (PAWSS)). In addition, within six months of the conclusion of the competitive bidding procedures to determine the licensees in each VPC, the U.S. Coast Guard shall submit to each licensee of VPCs 1-9 a plan specifying up to two narrowband channel pairs offset 12.5 kHz from the channels set forth in the table in paragraph (c)(1)(A) of this section, for use in the PAWSS. The final selection of the PAWSS channel pairs can be negotiated (if the VPC licensee objects to the Coast Guard proposal, it shall make a counterproposal within three months) and established by an agreement between the parties. All parties are required to negotiate in good faith. If no agreement is reached within one year of the date the Coast Guard submitted its plan, the Coast Guard may petition the Commission to select the channel pairs.

(4) Subject to the requirements of § 80.21, each VPC licensee may place stations anywhere within its region without obtaining prior Commission approval provided:

(A) It provides to co-channel coast station incumbent licensees, and incumbent Private Land Mobile Radio licensee authorized under part 90 of this chapter on a primary basis, protection as defined in subpart P of this part. VPC licensees that share a common border may either distribute the available frequencies upon mutual agreement or request that the Commission assign frequencies along the common border.

(B) The locations and/or technical parameters of the transmitters are such that individual coordination of the channel assignment(s) with a foreign administration, under applicable international agreements and rules in this part, is not required.

(C) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, licensees must notify the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460-1) and file a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC, Attn: Information Processing Branch, 1270 Fairfield Rd., Gettysburg, PA 17325-7245.

(D) The transmitters must not have a significant environmental effect as defined by §§ 1.1301 through 1.1319 of this chapter.

* * * * *

13. Section 80.751 is amended to read as follows:

§ 80.751 Scope.

This subpart specifies receiver antenna terminal requirements in terms of power, and relates the power available at the receiver antenna terminals to transmitter power and antenna height and gain. It also sets forth the co-channel interference protection that VHF public coast station geographic area licensees must provide to incumbents.

14. Section 80.773 is amended to read as follows:

§ 80.773 Co-channel interference protection.

(a) Where a VHF public coast station geographic area licensee shares a frequency with an incumbent VHF public coast station licensee, the ratio of desired to undesired signal strengths must be at least 12 dB within the service area of the station.

(b) Where a VHF public coast station geographic area licensee shares a frequency with an incumbent private land mobile radio licensee, the VHF public coast station geographic area licensee must provide at least 10 dB protection to the PLMR incumbent's predicted 38 dBu signal level contour. The PLMR incumbent's predicted 38 dBu signal level contour is calculated using the F(50, 50) field strength chart for Channels 7-13 in § 73.699 (Fig. 10) of this chapter, with a 9 dB correction factor for antenna height differential, and is based on the licensee's authorized effective radiated power and antenna height-above-average-terrain. The 10 dB protection to the incumbent's predicted 38 dBu signal level contour shall be calculated using the F(50, 10) field strength chart for Channels 7-13 in § 73.699 (Fig. 10a) of this chapter, with a 9 dB correction factor for antenna height differential.

15. New subpart Y is added to read as follows:

Subpart Y -- Competitive Bidding Procedures

§ 80.1251 Maritime communications services subject to competitive bidding.

§ 80.1252 Designated entities.

§ 80.1251 Maritime communications services subject to competitive bidding.

Mutually exclusive initial applications for VPC licenses, high seas public coast station licenses, and AMTS coast station licenses are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 80.1252 Designated entities.

(a) This section addresses certain issues concerning designated entities in maritime communications services subject to competitive bidding. Issues that are not addressed in this section are governed by the designated entity provisions in part 1, subpart Q of this chapter.

(b) *Eligibility for small business provisions.*

(1) A small business is an entity that, together with its affiliates and controlling interests, has average gross revenues not to exceed \$15 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates and controlling interests,

has average gross revenues not to exceed \$3 million for the preceding three years.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraph (b)(1) or (b)(2) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(4) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(5) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (b)(1) of this section (or each of which individually satisfies the definition in paragraph (b)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

(c) *Controlling interest.*

(1) For purposes of this section, controlling interest includes individuals or entities with *de jure* and *de facto* control of the applicant. *De jure* control is greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, the general partner. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(A) the entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(B) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(C) the entity plays an integral role in management decisions.

(2) *Calculation of certain interests.*

(A) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(B) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified below.

(C) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and, to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust.

(D) Non-voting stock shall be attributed as an interest in the issuing entity.

(E) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(F) Officers and directors of an entity shall be considered to have an attributable interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have an attributable interest in the licensee or applicant.

(G) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(H) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have an attributable interest in such applicant or licensee if such person, or its affiliate pursuant to § 1.2110(b)(4) of this chapter, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence

(i) The nature or types of services offered by such an applicant or licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(I) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have an attributable interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such an applicant or licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(d) A winning bidder that qualifies as a small business or a consortium of small businesses as defined in § 80.1252(b)(1) or § 80.1252(b)(5) of this subpart may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in § 80.1252(b)(2) or § 80.1252(b)(5) of this subpart may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter.

III. Part 90 - Private Land Mobile Radio Services

16. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 251-2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251-2, 303, 309 and 332, unless otherwise noted.

17. Section 90.283 is removed.